HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's Order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2) (b)

Description of the case

W.P. No. 564/04(S/S)

Anil Joshi and others

Vs.

State and others

Approved for reporting

~~Not approved for reporting~~

Date of Decision 27.02.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 564 (SS) OF 2004

1. Constable No. 172 Anil Joshi,
   S/o late Sri Suresh Chandra Joshi,
   R/o Gram Doli, Post Jajardeol,
   District Pithoragarh.
2. Constable No. 50316 Yogendra Singh,
   S/o late Sri Balbir Singh,
   R/o C/o Mrs. Vimla Devi,
   Bapu Gram – Suman Vihar,
   Rishikesh, District Dehradun. .....Petitioners.

Versus

1. State of Uttaranchal, through Secretary Home, District Dehradun.
2. Senior Superintendent of Police, District Dehradun.
3. Deputy Inspector General of Police (Karmik) Police Headquarters, District Dehradun. .....Respondents.

Sri Sharad Sharma, Advocate for the petitioner.
Learned Standing Counsel for the State.

Dated: 27.02.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of mandamus commanding the respondents to appoint the petitioners on the post of Sub Inspector according to the qualification which they possess under the Dying in Harness Rules.

2. Brief facts giving rise to the present writ petition are that the father of the petitioner no. 1 had been working with the respondents in the capacity of a Head Constable till the time

when he died on 11.04.2002 in harness. The father of the petitioner no.2 had been working with the respondents in the capacity of a Head Constable (P.D.C.) Haridwar till the time when he died on 14.10.2001 in harness.

3. After the death of the bread-earners i.e. father of the petitioners, they applied for appointment under Dying in Harness Rules, 1974. The respondents after scrutinizing the applications regarding the appointment on compassionate ground, issued letter on 01.08.2002 calling upon the petitioners to submit the important documents and to fulfill all the formalities for their participation in the process of selection.

4. It has been submitted other similar persons who were claiming for appointment on compassionate ground under Dying in Harness Rules were called for interview as will appear from the letter dated 11th October, 2002 for the post of Sub Inspector.

5. On 28.02.2002, the respondent no.2 issued a letter informing the petitioners to give their consent for being recruited on the post of a constable within a week.

6. After the appointment of the petitioners on the post of constable, the petitioner applied for appointment on the post of Sub Inspector (Annexure 5 to 6 to the writ petition)

7. The grievance of the petitioners are that the said representation has not yet been decided.

8. In paragraph 10 of the writ petition, it has been stated that the similar persons have been appointed as a Sub Inspector as will appear from the order dated 11th October, 2002.

9. A counter affidavit has been filed by the State, where it has been stated that there has been a policy decision dated 4th October, 2002 where it has been stated that it has been state that no appointment shall be made on the psot of Sub Inspector

and appointment under the Dying-in-Harness Rules shall be provided on the post of Constable, Civil Police.

10. Learned Standing Counsel for the respondents in paragraph 15 of the counter affidavit has rebutted the contention of the petitioners so far as other candidates which have been appointed on the post of Sub Inspector were appointed prior to the Policy Decision dated 4th October, 2002.

Paragraph 15 of the counter affidavit is quoted below:-

"That the contents of para 10 of the writ petition are misconceived and as such are denied as stated. It is submitted tht the persons were given appointment as their case was approved fro appointment on the post of Sub Inspector prior to the Policy Decision dasted 4th October, 2002. the details of the approval granted to the person prior to the policy decision dated 4th October, 2002 is being shown below:-

Sl. No.	*Applicant's Name*	*Date of Receipt of Proposal from the District*	*Date of Approval granted*
1	*Sri Praveen Singh*	*19/11/2001*	*21/11/2001*
2	*Sri Ven Prakash Thapliyal*	*15/12/2000*	*28/01/2002*
3	*Sri Sandeep Kumar*	*14/09/2001*	*16/03/2002*
4	*Sri Pankaj Devarani*	*14/01/2002*	*16/03/2003*
5	*Sri Arun Kumar*	*02/03/2002*	*31/03/2002*
6	*Sri Ashok Kumar Singh*	*14/09/2001*	*14/04/2002*

From perusal of the above referred chart it is clear that no person has been appointed or given approval for appointment on the post of Sub Inspector after the policy decision dated 4th October, 2002."

Learned counsel for the petitioners has referred Rule 5 of the U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974, which reads as under:-

"[5. ***Recruitment of a member of the family of the deceased****.-(1) In case a Government servant dies in*

harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government shall, on making an application for the purposes, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules if such person---

(i) fulfils the educational qualifications prescribed for the post,

(ii) is otherwise qualified for Government service, and

(iii) makes the application for employment within five years form the date of the death of the Government servant :

Provided that where the State Government is satisfied that the time-limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner.

(2) As far as possible, such an employment should be given in the same department in which the deceased Government servant was employed prior to his death.]

[(3) Each appointment under sub-rule (1) should be under the condition that the person appointed under sub-rule (1) shall upkeep those other family members of the deceased Government Servant, who are incapable for their own maintenance and were dependent of the abovesaid deceased Government servant immediately before his death."

Similar controversy came before the Allahabad High Court where in ***Raj Kumar Pundir Vs. State of U.P. and others 2004 (5) AWC 3899,*** while deciding the case under Dying in Harness Rules, arguments were raised, which were replied by the Single Judge of the Allahabad High Court in paragraphs 15, 16, 17 and 18 of the judgment. The same are quoted below:-

"15. On a query being made by this Court, the standing counsel has informed this Court that they have received instructions that there is shortage of Sub-Inspector in the police department and a large number of vacancies of sub Inspector are lying vacant due to which difficulty is being faced in working by the department. On further query being made by this Court it has been informed that some of the dependents of the constables who died in harness and had filed writ petitions and have withdrawn their petitions their cases are being considered for the post of Sub Inspector and those dependents of constables who have not approached the Court are beyign considered for appointment on the post of Sub-Inspector. It is only the petitioners who have not withdrawn their cases and have approached the Court are being considered for the policy of the then D.I.G. (Establishment) Headquarter, Allahabad. Thus, discrimination in matter of public employment is writ large on the face of record which is also apparent from paragraph 8, 9, 10, 12, and 13 of the supplementary affidavit.

16. In the counter affidavit the only defence taken is that the petitioners have no legal right to seek appointment on a particular post and they have been offered appointment on the post of constables on compassionate ground in view of the Rules and Regulations. The averments made in paras 16 and 17 of the writ petition that the petitioner was subjected to the physical test fgor the post of Sub-Inspector and was found to be

physical test for the post of Sub-Inspector and was found to be fully eligible for the said post have not been denied. It is not denied that the right from the initial stage the applications of the petitioners for appointment on compassionate ground were processed for the post of Sub-Inspector in the civil police. The petitioners were also subject to the physical test for the post of Sub-Inspector and were found to be fully eligible for the said post. It further appears from Annexure-5 to the supplementary affidavit that in the year 2001 and 2002 the dependents of the Constables have been given appointment as Sub-Inspector …

17. Thus, it is established from the record that compassionated appointments have been granted to a large number of persons as Sub Inspector despite the fact that their father were working as Constables and Head Constables at the time of their death. Even otherwise, the letter dated 20th September, 2003, referred to above supports the case of the petitioners that the decision taken by the then Deputy Inspector General of Police (Establishment) U.P. Police Headquarters, Allahabad was incorrect and erroneous and there has been hostile discrimination with the petitioners in matter of public employment."

In the above said case, Allahabad High Court has directed that the claim of the petitioner for the post of Sub Inspector shall be considered by the respondents within a period of one month from the date of production of the certified copy of the order.

In **Sushma Gosain v. Union of India, (1989) 4 SCC 468,** it has been held as under:-

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of

providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

In the light of the aforesaid facts, the respondents are directed to pass appropriate orders on the application/representation filed by the petitioners for the post of Sub Inspector within a period of three months from the date of presentation of the certified copy of the order.

Writ petition is disposed of accordingly. No order as to costs.

(Rajesh Tandon, J.)

27.02.2006

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